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Acts of terror on British soil have been remarkably commonplace in the past thirty-five years. In addition to Irish nationalist and Loyalist violence relating to the Troubles in Northern Ireland, groups as diverse as Black September, the Animal Liberation Front and the Angry Brigade, individuals with links to Hezbollah and Al Qaeda, and agents of foreign powers such as Libya, Iraq and Syria have all mounted attacks in the United Kingdom. In the past five years British citizens have been killed in terrorist attacks in Turkey, Jordan, Qatar, Saudi Arabia, Indonesia and the United States. More Britons were killed in the World Trade Center on September 11th, 2001 than in any terrorist event before or since. In July 2005 52 people were killed and more than 700 injured in suicide bombings that targeted the London Transport system. Suffice it to say, the British government takes the threat from terrorism, whether domestic or international in origin, extremely seriously.

How is UK government counterterrorism work organized, compared with that in the US, to prevent or disrupt terrorism plots?

Perhaps the most significant difference between the British and American approaches to counterterrorism is conceptual. Since 1974 the British government has embraced a doctrine of criminalization in its counterterrorism operations with the aim of delegitimizing terrorist violence by treating terrorism as just another criminal activity to be dealt with at a local level.

In Northern Ireland this strategy - which became known as criminalization, normalization and Ulsterization - guided British attitudes for the bulk of the conflict and has been credited with creating a climate in which cross-border co-operation could flourish and a meaningful peace process could gain ground amongst the warring parties. Having tried brute force in the early 1970s (see below) and found it wanting, the British government has come to appreciate the importance of legitimacy in counterterrorism operations. Criminalizing terrorism adds greatly to the appearance of legitimacy as the security forces go about their work. It also creates a framework which significantly mitigates the sort of abuses that can discredit a government internationally.

In 2003 the British government adopted a "core strategy" for countering international terrorism known within government circles by the appellation CONTEST. The strategy is divided into four principal strands:

- Prevention (social inclusion, international dialogue, legislation, border security);
- Pursuit (intelligence collection and law enforcement);
- Protection (target hardening);

- Preparedness (emergency response).

Although the British government has declared itself willing in principle to use military force in accordance with international law for counterterrorism purposes when non-military tools cannot achieve its goals, it recognizes that there are "considerable challenges" to doing so and this remains a last resort rather than an integral part of the core counterterrorism strategy.

To what extent do British and US laws respectively hinder or help terrorism prevention?

The British government's early missteps in its counterterrorism campaign against the Irish Republican Army (IRA) and the Provisional IRA (PIRA) may be instructive in regard to this question. Comparison and analogy are not always reliable policy guides but the British experience in Northern Ireland offers some useful insights into the inherent risks involved in the following areas: internment without charge, coercive interrogation and the use of military personnel in a traditional law enforcement role. The introduction of these measures resulted from the initial decision to treat the Troubles in much the same way as a colonial disturbance. Emblematic of this approach was the arrival of Brigadier Frank Kitson, the celebrated author of the classic counterinsurgency manual *Low Intensity Operations* and a veteran of British military campaigns in Malaya, Kenya and Oman, to command the British Army Brigade in Belfast. The legacy of this policy was a major escalation in the level of violence across the Province and the extension of the nationalist terror campaign to the British Mainland.

Internment

In the fall of 1971, faced with escalating violence in the Province, the Unionist Prime Minister of Northern Ireland Brian Faulkner persuaded the British government that the introduction of internment might bring the situation under control. On August 9th, 1971 British troops mounted a series of raids across Northern Ireland which resulted in the detention of 342 IRA suspects. The operation, codenamed Demetrius, was characterized by poor and out of date intelligence which resulted in many individuals being wrongly detained. Joe Cahill, then Chief of Staff of the Provisional IRA and a prominent target of Operation Demetrius, taunted the authorities by surfacing to hold a press conference in Belfast at which he claimed only 30 of the men who had been detained were actually members of PIRA.

Within Northern Ireland internment further galvanized the nationalist community in its opposition to British rule and there was an immediate upsurge in violence against the security forces. 27 people had been killed in the first eight months of 1971 prompting the introduction of internment, in the four remaining months of the year 147 people were killed. 467 were killed in 1972 as a result of terrorist action. The number of terrorist bombings in the Province increased dramatically from around 150 in 1970, to 1,382 in 1972. In the words of a former British Intelligence officer Frank Steele who served in

Northern Ireland during this period: "[Internment] barely damaged the IRA's command structure and led to a flood of recruits, money and weapons."

Internment was to continue in Northern Ireland until December 5th, 1975 by which time a total of 1,981 people had been detained, the vast majority of them from the Catholic community. The British Army estimated that up to 70% of the long-term internees became re-involved in terrorist acts after their release so the measure clearly did little to deter committed activists. The British government finally took the decision to discard the power of internment in January 1998. Announcing the decision, the Junior Northern Ireland Minister Lord Dubs told the House of Lords: "The Government have long held the view that internment does not represent an effective counter-terrorism measure… The power of internment has been shown to be counter-productive in terms of the tensions and divisions which it creates."

Coercive Interrogation

In the immediate aftermath of the introduction of internment in August 1971 the British security forces implemented a policy of "interrogation in depth" for selected detainees. RUC interrogators working "under the supervision" of the British Army applied five well-established techniques which had previously been practiced in the course of colonial emergencies: (1) hooding, (2) wall-standing, (3) subjection to noise, (4) relative deprivation of food and water and (5) sleep deprivation. Almost a third of those detained on the first day of Operation Demetrius were released within 48 hours and with these releases came the first stories about the ill-treatment of those held by the security forces. In addition to the use of the 'five techniques', detainees reported being forced to run an obstacle course over broken glass and rough ground whilst being beaten and, perhaps most seriously of all, being deceived into believing that they were about to be thrown from high flying helicopters unless they agreed to co-operate with the authorities.

In August 1971 British Home Secretary Reginald Maudling responded to growing public concern by appointing Sir Edmund Compton to investigate forty such complaints made by suspects apprehended on the first day of internment. Despite accepting that the events described by the plaintives did indeed take place, Sir Edmund reported: "Our investigations have not led us to conclude that any of the grouped or individual complainants suffered physical brutality as we understand the term." The failure of the Compton Report to meaningfully address the abuses that had occurred in British detention facilities further damaged the government's credibility.

Ultimately, the government's failure to act decisively to curb abuses and put an end to the use of the 'five techniques" led the Republic of Ireland to file an application with the European Commission on Human Rights alleging that the emergency procedures applied against suspected terrorists in Northern Ireland violated several articles of the European Convention on Human Rights. The case was referred to the European Court of Human Rights for adjudication which found that the 'five techniques' were "cruel, inhuman and degrading" and thus breaches of Article 3 of the Convention.

The actual utility of coercive interrogation was also addressed at some length in the course of the *Ireland v. United Kingdom* case. The British government sought to argue that it had been necessary to introduce such techniques to combat a rise in terrorist violence. The government claimed that the two instances of "interrogation-in-depth" addressed by the Court had obtained a considerable quantity of actionable intelligence, including the identification of 700 active Republican terrorists and the discovery of individual responsibility for about 85 previously unexplained criminal incidents. However, other well-informed sources are more skeptical. The former British intelligence officer Frank Steele told the journalist Peter Taylor: "As for the special interrogation techniques, they were damned stupid as well as morally wrong... in practical terms, the additional usable intelligence they produced was, I understand, minimal." Certainly the last quarter of 1971, the period during which these techniques were most employed, was marked by mounting not decreasing violence – a fairly obvious yardstick by which to measure their efficacy.

Military Operations

The final incident to have a major impact on the evolution of IRA violence in the period 1971-1972 was the event that has become known as *Bloody Sunday*. On January 30th, 1972 soldiers from the British Parachute Regiment opened fire on civilian demonstrators in Londonderry/Derry killing 13 and wounding 29. The march that sparked the violence had been called to protest internment, rocks had been thrown at the soldiers and a shot allegedly fired, but the disproportionate British response prompted widespread international condemnation. In Dublin an enraged mob stormed the British Embassy burning it to the ground. The British government appointed the Widgery Tribunal to investigate the incident but it exonerated the soldiers involved handing the Republican community yet a further propaganda victory.

The nature of IRA violence changed dramatically after *Bloody Sunday* as the incident prompted the first mainland bombing of the Troubles in February 1972 when the Official IRA left a car bomb outside the Officer's Mess of the Parachute Regiment in Aldershot, Hampshire. An Official IRA spokesman issued a statement in Dublin that the attack had been carried out "in revenge" for the *Bloody Sunday* killings. Deliberate attacks on civilian targets on the British Mainland soon followed including four simultaneous car bombs left in London in March 1973, bombs at mainline London railway stations in September 1973 and in public houses in Guildford and Birmingham in the autumn of 1974.

Throughout the Troubles Britain found itself defending the use of deadly force against terrorist suspects in a succession of European Convention on Human Rights cases. In perhaps the most damaging case - *McCann and Others v. United Kingdom* (1995) - the court found that three members of a PIRA Active Service Unit (ASU) had been killed unlawfully when British Special Forces troopers interdicted their operation on the British overseas territory of Gibraltar. Lingering suspicions that Britain operated a 'shoot-to-kill' policy in its counterterrorist operations against PIRA were extremely damaging to the

country's international reputation and became a major source of resentment in the nationalist community.

How is UK government counterterrorism work organized, compared with that in the US, to prevent and disrupt terrorism plots?

Coordination

The greatest single strength of the British approach to counterterrorism is the high degree of coordination that now extends throughout the national security hierarchy. This was not something that happened overnight but has evolved over several decades. At the apex of this system is the Joint Intelligence Committee (JIC) comprised of the heads of each intelligence agency and chaired by a senior civil servant with experience of, but not necessarily from, the intelligence community.

The Committee meets weekly or more frequently should circumstances require it. Its primary role is to produce definitive top-level all-source assessments for British ministers and senior officials. These assessments are produced by Cabinet Intelligence Groups (CIGs) chaired by Cabinet Office staff and comprised of subject experts from the intelligence community. Every relevant party is represented and the objective of the group is to agree a corporate assessment that reflects a consensus view across government. Thus ministers are not bombarded by conflicting information and left to reach their own conclusion regarding the most compelling interpretation.

Each Service also submits an account of its overall performance to the Joint Intelligence Committee (JIC) for consideration by the Security and Intelligence Coordinator as part of the Agency Performance Review. The JIC reviews and validates the Services' plans and priorities for the forthcoming year as part of this process.

Subject experts from different agencies frequently have the formal opportunity to add their comments to intelligence reports issued by other agencies ensuring that key intelligence – HUMINT and SIGINT – is presented along with corroborating or discrediting material from other sources. Finally, it is worth noting that the relatively small size of the British intelligence community allows subject experts to develop strong relationships with their counterparts in other agencies. This greatly facilitates the flow of information between agencies and helps to reduce inter-service rivalry.

The Joint Terrorism Analysis Center (JTAC) was established in June 2003 as the United Kingdom's center for the analysis and assessment of international terrorism. JTAC sets threat levels and issues warnings of threats and disseminates in-depth reports on trends, terrorist networks and capabilities to its partners in government. Eleven government departments and agencies are represented on the staff of JTAC and the center is based in Thames House, the headquarters of the British Security Service. The head of JTAC reports directly to the Service's Director General.

The Role of the Security Service (MI5)

The Security Service has primacy in all counterterrorism intelligence investigations conducted either on the British mainland or overseas. According to the Intelligence and Security Committee report on the July 2005 London Transport bombings, the number of MI5's "primary investigative targets" rose from 250 to 800 between September 11th, 2001 and July 2005. Intelligence-gathering operations relating to these "primary targets" are the Service's main priority.

The Security Service also acts as an interface between the intelligence community and law enforcement. It has developed a deep institutional understanding of the demands and operational constraints of each paradigm. The Service is not an executive agency and its officers have no powers of arrest. Executive action can only be taken by the nation's law enforcement agencies although Chief Constables have the option of requesting military support in certain circumstances. Post-incident primacy rests with the police service in whose force area a terrorist incident has occurred, although MI5 can continue to act in a supporting role to the police investigation. The Service can bring a range of resources not usually available to Chief Constables to support local operations. The Northern Ireland Police Service still enjoys intelligence primacy in Northern Ireland although this status is currently under review.

As the central coordinating point in Britain's pre-emptive counterterrorist effort, the Security Service also disseminates intelligence to regional police forces and other governmental partners in the form of both actionable reports and background bulletins which can cover anything from briefings on different terrorist organizations to technical reports on terrorist weapon systems. The Service advises Whitehall and the business community on protective security measures and runs training courses for external – even foreign - personnel. It spearheaded the installation of nationwide secure communications system for police Special Branches and provides national coverage in a system which is otherwise robustly regional in character.

The Security Service can be seen as the glue that holds the architecture of the British counterterrorist effort together. There are currently forty-three regional police forces in England and Wales most with less than 4,000 officers, another eight in Scotland operating under a separate judicial system, the Northern Ireland Police Service and a small number of forces with specialized roles such as British Transport Police or the Ministry of Defence Police. There is no national police force equivalent to the Federal Bureau of Investigation (FBI) although the newly created Serious Organized Crime Agency (SOCA) is beginning to partly develop in this direction. The fact that the government chose a former Director General of the Security Service, Sir Stephen Lander, as the first head of the SOCA is an important illustration of the reputation MI5 has established for building effective coalitions within the law enforcement community.

Oversight

It is probably fair to say that the British public lacks "the dread of government" often ascribed to the American people and this can be seen in the relatively benign oversight mechanisms that govern the operations of the security and intelligence agencies. Although a former Director General of the Security Service, Dame Stella Rimmington, has observed that accountability lies at the heart of the tension between liberty and security, this is an area in which the United Kingdom differs markedly from the United States.

In the United Kingdom the oversight applied to the operation of the intelligence and security services is primarily either Ministerial (the Home Secretary or Foreign Secretary) or bureaucratic (the Joint Intelligence Committee and National Audit Office) although some public mechanisms for redress exist through designated Tribunals or Commissioners. Parliamentary oversight is limited to a single statutory committee with a legally defined brief restricted to matters of expenditure, administration and policy. This is a constitutional oddity – the parliamentary oversight of governmental bodies is usually conducted by Parliamentary Select Committees which have greater freedom to set their own agendas. More details on the oversight regime in the United Kingdom can be found at Annex A.

What aspects of MI5's organization could usefully be adopted by US counterterrorism and security environments?

Post incident investigation and pre-emptive intelligence gathering require a different – and not always symbiotic - skill set. Furthermore, from a managerial perspective prosecution and intelligence exploitation can frequently be mutually exclusive objectives greatly detracting from clarity of purpose. While clearly there is no *a priori* reason why both functions cannot effectively be undertaken by the same agency, the British experience suggests that this can prove problematic.

The counterterrorist function in the United Kingdom was initially vested in Police Special Branches (SB) comprised of detectives operating within regional constabularies. The first Special Branch was established by the Metropolitan Police in 1883 to counter the threat from the Irish Republican Brotherhood. Police Special Branches, coordinated by the Metropolitan Police, enjoyed primacy in counterterrorist intelligence investigations on the British mainland for most of the Twentieth Century.

At the outset of the 1990s a degree of governmental dissatisfaction at the lack of success of this arrangement, coupled with an expectation that the collapse of the Warsaw Pact would free up intelligence resources, led in 1992 to the transfer of primacy from the Special Branches to the Security Service. The Special Branches had been able to boast very few successful intelligence-led arrests. The Service by contrast had an almost immediate impact and the number of pre-emptive disruptions of terrorist activity

increased, with Service operations leading to 21 convictions for terrorism-related offences between 1992 and 1999.

However, this consideration also needs to be balanced against another important lesson of the British experience, which is that institutional relationships need time to bed down and that once agencies start operating effectively these relationships improve and strengthen over time. Police Special Branches have been working closely with the Security Service since 1910 when the then Home Secretary, Winston Churchill, provided MI5's first Director General, Vernon Kell, with a letter directing the chief constables to extend him "the necessary facilities for his work." The Security Service and the Secret Intelligence Service were both born out of the same government agency, the Secret Service Bureau, and ties have remained close. The key to this virtuous circle in the United Kingdom has been effective executive leadership. There is definitely a sense in which disrupting existing relationships can have a retrograde effect on effective cooperation.

In your understanding, to what degree, if at all, has UK foreign policy contributed to what has been called "homegrown" terrorist activity?

British foreign policy has probably played a part in the emergence of "homegrown" terrorists such as those who participated in the July 2005 London bombings but clearly other factors, such as social exclusion or radical proselytizing, also play an important role. To some extent, it is inevitable that terrorist groups or causes will arouse sympathy within small segments of the domestic population. For example, the Provisional IRA attracted some support from amongst fringe Marxist groups in England. In January 1993 two English members of Red Action, one of them a former private in the British Army, planted a small explosive device in a litterbin outside the upscale London department store, Harrods, an action they took on behalf of PIRA. Government policies, both foreign and domestic, often have the potential to contribute to the radicalization of groups in society where some predisposition towards violence exists.

How do UK civil liberties laws compare to those in the US?

There appears to be a perception in the United States that there are fewer civil liberties protections in the United Kingdom and that the British government consequently has a far freer hand to develop stringent counterterrorist measures. However, this impression is not entirely accurate. The protective framework for civil liberties in the United Kingdom is dense and complex, and at times can be both more flexible and more implacable than the equivalent protective measures in the United States.

Unlike the United States, Great Britain does not possess a single foundational document that amounts to a written constitution. Constitutional practice has evolved over centuries and is embedded in common law and a series of legislative instruments. In this sense there is a great deal of flexibility for British legislators to shape the legal landscape.

However, in past fifty years a significant external check on this power has emerged in the shape of the European Convention on Human Rights (ECHR).

The ECHR is a treaty that operates within the framework of the Council of Europe. It was ratified by Britain in 1953, which is currently one of forty-six Contracting States. The original draft of the Convention was inspired by the United Nations' 1948 Universal Declaration of Human Rights. The closest that Britain comes to a Bill of Rights, in the American sense, is the Human Rights Act of 1998. This Act of Parliament was passed to "give further effect" to the rights and freedoms detailed in the ECHR by enshrining them in British law.

As a signatory of the ECHR, Britain has voluntarily submitted to a binding enforcement mechanism in the shape of the European Court of Human Rights in Strasbourg, France. Britain, like the other Contracting States, has accepted the Strasbourg Court's ultimate jurisdiction in adjudicating matters arising from alleged breaches of the Convention. This means that the judgments of British courts are no longer sovereign in such cases but must give way to a higher authority staffed by foreign judges. The Court seeks to empathetically balance Contracting States' individual circumstances against the human rights standards embodied in the Convention by allowing each state "a margin of appreciation" in interpreting their treaty obligations. In such instances, the basic test applied by the Court is whether or not the disputed practice answers a pressing social need and, if so, can be considered proportionate to the legitimate aim pursued. The domestic margin of appreciation is thus accompanied by a level of European supervision.

This margin of appreciation has been applied by the Court in considering cases related to terrorism and other threats to parliamentary democracy with a flexibility not enjoyed by the US Supreme Court. For example, in 1972 the Federal Republic of Germany adopted a decree aimed at excluding political extremists from employment in the civil service and reiterating all civil servants' legal duty of loyalty to the free democratic constitutional system. In a series of cases arising from the dismissal of members of the left-wing German Communist Party (KPD) and right-wing National Democratic Party (NDP) from Civil Service positions (most often in the teaching profession), the Court accepted that "a democratic state is entitled to require civil servants to be loyal to the constitutional principles in which it is founded" and took into account "Germany's experience under the Weimar republic and the bitter period that followed the collapse of that regime" (*Vogt v. Germany*, 1995).

In questions of free speech the Court has recognized that there is a balance to be struck between protecting national security and protecting fundamental human rights. The Court has explored where this balance lies most carefully in a series of complaints from Turkey arising from the local prosecution of articles and statements critical of Turkish government policy towards the Kurdish Workers' Party (PKK) finding for the government in *Zana v. Turkey* (1997) and against it in *Incal v. Turkey* (1998) and *Arslan v. Turkey* (1999). In its deliberations the Court weighed such factors as the prominence of the individual concerned, the circumstances of publication, the political climate at the time the statement was made and the 'virulence' of the language used. It is therefore

unlikely that the Court will strike down the most controversial section of Britain's *Terrorism Act* (2006) which creates a new offence of "glorifying terrorism."

The Court made it clear in *Ireland v United Kingdom* (1978) that it did not see that it was any part of its function "to substitute for the British Government's assessment any other assessment of what might be the most prudent or most expedient policy to combat terrorism." The Court restricted its role to reviewing the lawfulness, under the Convention, of the measures adopted by the Government in Northern Ireland. In this context, in *Ireland v. United Kingdom* the Court did not find extra-judicial internment a breach of the Convention nor did it find the British primary focus on Irish nationalist groups discriminatory. It did, however, rule against the use of coercive interrogation methods in detention centers in the Province (of which more below).

The reason for this discrepancy is that, although States do have the right under Article 15 of the ECHR to lodge a derogation from some aspects of the Convention - during a period of public emergency "threatening the life of the nation" to the extent strictly required by the exigencies of the situation - there can be no derogation from the core values embodied in Article 2 (right to life), except in respect of deaths resulting from lawful acts of war, Article 3 (prohibition on torture or inhuman or degrading treatment), Article 4 (prohibition on compulsory labor) and Article 7 (prohibition on retrospective criminalization).

The United Kingdom was the only European state to register a derogation from the Convention after the attacks in the United States on September 11th, 2001. The British government formally derogated from article 5(1)(f) of the ECHR, which protects against deprivation of liberty except for purposes of deportation or extradition. The reason for this decision was to allow the government to operate a special detention regime for political asylum applicants to the United Kingdom suspected of involvement in terrorism, where it was not possible to deport them because they would be at risk of torture or death if returned to their country of origin.

Introduced in December 2001 as part of the Anti-Terrorism Crime and Security Act (ATCSA), this detention regime was finally overturned by the Law Lords (the British equivalent of the US Supreme Court) in December 2004 as a breach of Britain's Human Rights Act (1998). In all, sixteen individuals were detained under the ATCSA and all were subsequently released although most are still subject to control orders restricting their freedom of movement.

Britain has contributed more to the evolving jurisprudence of the European Court in the area of national security than other nation (except perhaps for Turkey) because of the Troubles in Northern Ireland. A number of landmark cases have had a major impact on British counterterrorism practice in areas such as the use of telephone intercepts, the legal status of the intelligence services, the use of military forces in a civilian context, oversight mechanisms, and the use of coercive interrogation methods.

Explain the UK Official Secrets Act and what impact an equivalent piece of legislation in the US would have on US counterterrorism efforts

The original Official Secrets Act (OSA) was passed by Parliament in 1911 as fears grew, fueled by a naval arms race, of German espionage activity in the United Kingdom. The Act was updated in 1920 to address additional requirements that had come to light during the First World War and then again in 1989. The original purpose of the OSA was to provide a legal framework for prosecuting acts of espionage although it also more generally circumscribes the unlawful dissemination of restricted government information. The 1989 Act attracted particular attention for removing the public interest defense originally recognized in the 1911 Act. This was a response to the successful use of the public interest defense in 1985 by the former British civil servant Clive Ponting who disclosed documents relating to military operations during the Falklands conflict to an opposition Member of Parliament who subsequently exposed this material to the press.

The OSA has been used successfully as a tool to prosecute foreign spies, perhaps most notably in the case of the KGB mole within the Secret Intelligence Service, George Blake, who was sentenced to forty-two years in prison in 1961. Its history as a tool to punish the leaking of classified information is less impressive. Even egregious breaches of the Act seem to attract relatively minor sentences (less than year in most recent cases) and prosecutions typically result in far greater exposure for the secrets the government had hoped to protect. Perhaps the best illustration of this dilemma is the 1987 Spycatcher Case in which the British government sought to prosecute a former Security Service officer, Peter Wright, for betraying the secrets of an organization that, at the time, it simultaneously refused to admit existed. The case was a debacle for the British government. Furthermore, foreign governments are typically reluctant to extradite individuals accused of OSA offences because of the political character of the offence. Australia ultimately declined to extradite Peter Wright who had retired to Australia prior to the publication of his memoirs and France has twice refused in recent years to extradite former British intelligence officers to the United Kingdom for trial on similar OSA-related charges.

Annex A

Oversight

Prior to 1985 none of the work of the British intelligence or security agencies was done on a statutory basis. The Government denied the very existence of the Secret Intelligence Service (SIS) and the Security Service (MI5). The agencies derived their authority from ministerial directives, such the Maxwell Fyfe Directive[1] which governed the operation of MI5, and the royal prerogative. There were no oversight mechanisms outside the chain of command of both agencies other than those afforded by the government departments to which they reported – the Foreign and Commonwealth Office and Home Office respectively. Financing for the agencies was obtained through an annual "Secret Vote" which approved a global figure submitted to Parliament without any supporting explanatory material. As a former Home Secretary, Jack Straw, has publicly acknowledged, the main catalysts for change were a series of cases before the European Court Human Rights, commencing with *Malone v. United Kingdom* (see Annex A), which incrementally addressed issues relating to the gathering of intelligence material and the operation of the intelligence agencies.

The government responded to this criticism by introducing the Security Service Act in 1989. This placed the UK's domestic intelligence agency on a statutory footing for the first time. The Act also established a Security Service Commissioner and a Complaints Tribunal. Between the introduction of the Security Service Act in 1989 and the end of 1997 the Tribunal investigated 275 complaints. No complaint was upheld. In the great majority of cases, the complainants were unknown to the Service.

The European Court of Human Rights considered that the Security Service Act placed the Service on sufficient legal footing for two pending cases involving alleged Security Service investigations to be discontinued. In the 1993 case *Esbester v. UK* the Court explicitly recognised that the Security Service Act struck a reasonable compromise between the requirements of defending a democratic society and the rights of the individual.

Although the Security Service Act went far enough to satisfy Britain's European Convention on Human Rights obligations it still fell short of providing for the sort of parliamentary oversight that many critics of the intelligence apparatus were calling for. It also made no mention of the Secret Intelligence Service (SIS) the existence of which was only avowed for the first time by Prime Minster John Major in 1992. These shortcomings were addressed in the Intelligence Services Act of 1994 which in addition to placing both SIS and GCHQ on a statutory footing and creating a complaints apparatus to cover both agencies also created a committee of Parliamentarians, the Intelligence and Security Committee, to "examine the expenditure, administration and policy" of all three intelligence and security agencies (SIS, GCHQ and MI5).

[1] The Maxwell Fyfe Directive is named after the Conservative Home Secretary and former Nuremburg Prosecutor who issued it on the occasion of the Security Service's formal transfer from the authority of the War Office to the Home Office.

The Intelligence and Security Committee (ISC) is constitutionally unique within the British system. Despite the fact that it is made up of Parliamentarians, it is not a Parliamentary Select Committee but a statutory committee with a legally defined brief. In some respects this gives it greater authority, adding weight to the Committee's requests for information. Its members are appointed from both Houses of Parliament by the Prime Minister after consultation with the Leader of the Opposition. Despite the executive's control over its appointments, the Committee has been characterized by its bipartisanship.

The bulk of the Committee's work is done *in camera* and its findings must effectively be taken on trust. The Committee also reports to the Prime Minister rather than to Parliament. As with the Commissioners' reports, the Prime Minster is free to withhold material from Parliament out of security concerns. In the words of one former Committee member: "A good oversight committee will never be able to answer all the questions that are raised by honourable Members about the secret agencies or their work. It may never be able to answer questions about all the issues that it is investigating. That is inevitable. However, colleagues in the House should be able to feel confident that someone is investigating issues on their behalf and has the power to do the job properly, even if ordinary Members of Parliament are not able to get the answers themselves."

The Committee's original remit was strictly limited by the Intelligence Services Act to the examination of ancillary issues. Any responsibility for the oversight of operational matters was pointedly omitted from the Act. However, the members of the ISC have been effective advocates for some extension of their powers in this area and in recent years they have been briefed on a wide range of the Services' operational work – often at the request of ministers who see the utility in gaining independent validation for policy decisions. Since 1998 the ISC has employed an Investigator to undertake specific enquiries under the Committee's direction. Intelligence officials themselves have largely embraced the ISC as a new source of legitimacy for their work.